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Bethesda, MD 20817
May 22, 2006

The Honorable Peter Hoekstra
Chairman

Permanent Selection Committee on Intelligence May 22, 2006
H-405, The Capitol
Washington, DC 20515

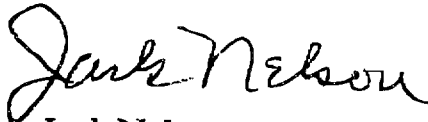
The Honorable Jane Harman
Ranking Member
Permanent Selection Committee on Intelligence
H-405, The Capitol
Washington, DC 20515

Dear Chairman Hoekstra and Ranking Member Harman:

Please find enclosed a statement for the record for your consideration in connection with the House Permanent Selection Committee on Intelligence's May 26 hearing on leaks of classified information.

As a journalist for more than 50 years with experience and a keen interest in the issue, I would very much appreciate your making my statement a matter of record for the Committee hearing.

Sincerely,


Jack Nelson

May 26, 2006

As a journalist for more than 50 years I would like to make this statement for the record concerning the House Intelligence Committee's hearings on leaks of classified information.

While I'm well aware of the tension between the press and the federal government over official secrecy that has existed throughout most of the country's history, I can't recall a time when the government has been so secretive and so aggressive in cracking down on leaks of official secrets. At the same time, the government itself leaks official secrets or classified information when it suits its purposes.

During the 32 years I covered Washington for the Los Angeles Times, including 22 years as bureau chief, it was not unusual for me and other bureau reporters to receive leaks of classified information from senior government officials during both Democratic and Republican administrations. And from members of both parties in Congress for that matter.

The motives of those who disclosed official secrets varied. Some wanted to give the public a better understanding of Government operations. Some were interested in promoting themselves or a political agenda or stirring opposition to a pending action. And some were whistleblowers interested in alerting the public to information, usually about some wrongdoing or inefficiency that other Government officials were interested in concealing.

But whatever their motives, they were giving people more access to information on how their Government was operating. And such leaks were so common, in fact, and so useful to all parties, that scarcely anybody stopped to reflect that they might be, at least technically, against the law.

In fact, some Government officials have publicly acknowledged that they routinely dispensed classified information in order to properly inform the public. As you know, in 2,000, after Congress passed a bill that would tighten the anti-leaks law and make it a crime to leak any classified information even if it was harmless, President Clinton vetoed the measure. He did it at the urging of some of his own officials.

The officials explained that they could not properly brief reporters on foreign affairs and national security without using classified information. Kenneth Bacon, Clinton's Pentagon spokesman, called the bill "disastrous" for journalists and for "any official who deals with the press on national security." And Strobe Talbot, Clinton's Deputy Secretary of State, told me for a paper on leaks and government secrecy that I wrote while at Harvard University as a Shorenstein Fellow in 2002, that the bill was "unbelievably pernicious for all kind of reasons." (The paper, "U.S. Government Secrecy and the Current Crackdown on Leaks," can be found on the Shorenstein Web Site and as a chapter in "Terrorism, War, and The Press," a Shorenstein book published in 2003.)

Congress so far has resisted other demands for broader anti-leak legislation that would criminalize unauthorized release of any confidential information. But with Congress once again debating that issue, I address the matter as a journalist who believes not only in the public's right to know, but in the Government's right to protect classified information vital to national security.

In my opinion journalists are as concerned as most other people that disclosure of certain sensitive classified information could endanger national security. And they have been especially sensitive to such possible dangers since the 9/11 terrorist attacks. In fact journalists' concerns became so acute that a group of them began meeting informally with national security officials to discuss ways to protect the most sensitive national security secrets without abridging the public's right to know.

The work of this unofficial group, known simply as the Dialogue, has been a rare positive step aimed at promoting access to information in a government that lately has been more inclined to let secrecy stifle the public's legitimate right to know how the government is operating. The group was started by Jeffrey H. Smith, a lawyer and former CIA general counsel, and former Washington Post reporter Scott Armstrong, executive director of the Information Trust, a nonprofit that promotes openness in the United States and internationally.

Senior officials from the Pentagon, Justice Department, CIA, and National Security Council, as well as some Congressional representatives have met with journalists in these unprecedented and largely unpublicized sessions of frank, off-the-record discussions of the issue of leaks of national security secrets. A major supporter of the Dialogue has been General Michael Hayden.

Several of the participants told me the dialogue sessions have made both media and government representatives much more sensitive to the nuances of leaks. As Jeffrey Smith says, national security leaders need to understand that some leaks are good for democracy and the country even though others are bad and the press needs to understand more about the sensitivity of national security leaks. "Everybody understands you don't publish that the 82nd Airborne is planning to land somewhere," he said, "but not everyone understands that it's a national security problem to report that Osama bin Laden's cell phone calls have been intercepted."

Bill Harlow, a Dialogue participant and then the CIA's public affairs officer, told me in 2002 that the group's sessions were educational for both sides and that there were times when a news article could be written without changing its thrust or doing any national security damage if journalists were willing to check with intelligence officials. "Often, agreeing to change just a few words is all it takes, and it helps to sensitize editors to that fact," he said.

In 2002 Dialogue participants helped persuade the Bush Administration not to endorse an anti-leaks measure similar to the one that Clinton vetoed. The measure would have made unauthorized disclosure of any classified information a crime even if the information was harmless or had been erroneously classified. Then Attorney General John Ashcroft's task force consulted with Dialogue participants that year before concluding that new anti-leaks legislation was not needed.

The Dialogue continues, but in my opinion, two strong trends since 9/11 argue for stronger support for it from both government and the press. These trends are the Government's dramatic increase in classifying documents as secret, and officials' increasing threats to prosecute journalists for publishing classified information.

The Information Security Oversight Office reports that the number of annual classification actions soared from 8.6 million in fiscal 2001 to a record high 15.6 million in fiscal 2004. An increase in stamping documents "secret" was to be expected in the aftermath of 9/11 and the war in Iraq. But the increase has been so immense, with many documents stamped secret even though they have little or nothing to do with sensitive national security issues, that it's no wonder officials can't properly inform the public about national security and foreign affairs without referring to classified information.

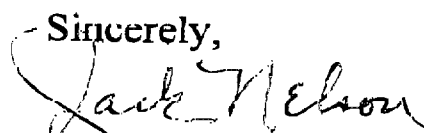
Meanwhile, journalists covering national security have reason to be concerned about threats from Government officials. An intelligence official suggested sending "swat teams into journalists' homes" if necessary to root out reporters' sources. And more recently Attorney General Alberto Gonzales has said the Government has legal authority to prosecute journalists for publishing classified information.

Any anti-leak law that would bring further pressure on reporters to disclose their confidential sources would severely hamper news coverage of the Government. I covered the activities of six different

administrations—four Republican and two Democratic—and directed the Los Angeles Times' Washington Bureau's coverage of five of them. And in all of the administration we had to rely on confidential sources in reporting on government developments that were of great public interest but that government officials tried to conceal.

My own reporting and the reporting of staffers I directed routinely disclosed governmental abuses of one kind or another based on solid sources who insisted on confidentiality for fear of reprisal if their identities became known. Without those sources the Los Angeles Times would have been unable to report numerous stories, some based on classified information, involving corruption or other questionable conduct in five administrations. Examples include: aspects of the Watergate scandal and abuses of power by the FBI and other agencies during the Nixon Administration; scandals in the Carter Administration involving OMB Director Bert Lance and President Carter's brother Billy Carter's representing Libya; illegal and inappropriate payments and cover-up attempts in the Iran/Contra scandal in the Reagan Administration; and cover-up attempts by President Clinton in the Monica Lewinsky affair.

Finally, I would respectfully urge members of the House Intelligence Committee to endorse support for the Dialogue and participate in its sessions. I strongly believe in both the public's right to know how its government operates and the government's right to keep sensitive national security information secret. But closer communications between the press and government is a much better course than new anti-leak legislation that undoubtedly would infringe on the public's right to know by adding to the secrecy of a government already dangerously steeped in secrecy.

Sincerely,

Jack Nelson